

Law Office of Richard D. Gronna
RICHARD D. GRONNA #5391
841 Bishop Street, Suite 2201
Honolulu, Hawaii 96813
Telephone: (808) 523-2441
Facsimile: (808) 566-0347
Email: rgronna@hawaii-personal-injury.com

Attorneys for Plaintiff
ZACHARY SMITH

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF HAWAII

ZACHARY SMITH, an individual,)	CIVIL NO. _____
)	
Plaintiff,)	COMPLAINT FOR DAMAGES; DEMAND
)	FOR JURY TRIAL; SUMMONS
vs.)	
)	
NOLAN ESPINDA, in his)	
individual capacity;)	
JODIE MAESAKA-HIRATA, in her)	
individual capacity;)	
PETER CABREROS, in his)	
individual capacity;)	
JONATHAN TOM, in his individual)	
capacity;)	
PATRICK CHONG, in his)	
individual capacity;)	
BRIAN MEDEIROS, in his)	
individual capacity;)	
JASON TAGALOA, in his)	
individual capacity;)	
JOHN and JANE DOES 1-20,)	
)	
Defendants.)	
_____)	

COMPLAINT FOR DAMAGES

COMES NOW Plaintiff, ZACHARY SMITH, by and through his
attorneys MICHAEL J. GREEN and RICHARD D. GRONNA and for a
complaint against JODIE MAESAKA-HIRATA, NOLAN ESPINDA, PETER

CABREROS, JONATHAN TOM, PATRICK CHONG, BRIAN MEDEIROS, JASON TAGALOA, in their individual capacities, and JOHN and JANE DOES 1-20, alleges and avers as follows.

INTRODUCTION

1. Plaintiff ZACHARY SMITH brings this tort and civil rights suit alleging violations to for harms that were committed while he was incarcerated at the Hawai'i Community Correctional Facility in violation of the 8th and 14th Amendments to the United States Constitution, Article 1 Section 12 of the Hawaii State Constitution, 42 U.S.C. § 1983, as well as other various common law causes of action.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the Federal Constitutional claims in this matter pursuant to 42. U.S.C. § 1983.

3. This Court has concurrent jurisdiction over the state claims in this matter pursuant to Chapter 663 of the Hawaii Revised Statutes ("H.R.S."), and jurisdiction over all Defendants pursuant to H.R.S. § 634-35.

4. Venue is proper in this Circuit, because all the substantial acts and omissions giving rise to the claims occurred in this District.

PARTIES

5. Plaintiff ZACHARY SMITH (hereinafter referred to as

"SMITH") is and at all relevant times a resident of the County of Hawai'i, State of Hawai'i.

6. Defendant NOLAN ESPINDA (hereinafter referred to as "ESPINDA"), is and was the Director of the Department of Public Safety According to the State of Hawaii Auditor, the Director of the Department of Public Safety "charges, directs, and coordinates the plans, programs, and operations of DPS to provide for the safety of people, both residents and visitors, from crimes against people and property". For purposes of Plaintiff's Federal law claims, he is sued in his individual capacity, for action under color of state law.

7. Defendant JODIE F. MAESAKA-HIRATA (hereinafter referred to as "MAESAKA-HIRATA") is the Deputy Director of the Hawaii Department of Public Safety Corrections Division ("DPS"). According to the State of Hawaii Auditor, the Deputy Director of the Department of Public Safety Corrections Division "provides for the custody, care, and assistance of all persons incarcerated by the courts or otherwise subject to confinement based on alleged commitment of a criminal offense". For purposes of Plaintiff's Federal law claims, she is sued in her individual capacity, for action under color of state law.

8. Defendant PETER CABREROS (hereinafter referred to as CABREROS), was an employee of the State of Hawaii Department of Public Safety and the Warden of Hawaii Community Correctional

Center (H.C.C.C.) at the time of the incident. As Warden of H.C.C.C. CABREROS responsible for the hiring, screening, training, retention, supervision, discipline, counseling, and control of D.P.S. employees assigned to H.C.C.C. including Defendants PATRICK CHONG, BRIAN MEDEIROS, and JASON TAGALOA and some or all of JOHN DOES 1-20 and JANE DOES 1-20. Defendant CABREROS is and was also responsible for the promulgation of the policies and procedures and allowance of the practices and customs pursuant to which the acts and omissions of Defendants D.P.S. employees assigned to H.C.C.C. including Defendants PATRICK CHONG, BRIAN MEDEIROS, and JASON TAGALOA and some or all of JOHN DOES 1-20 and JANE DOES 1-20, as alleged herein, were committed. Plaintiff is informed and believes and thereon alleges that Defendant CABREROS was responsible for enforcing D.P.S. policies and procedures at H.C.C.C., and that Defendant CABREROS had additional responsibilities during the times relevant herein, including conducting investigations of violent altercations between A.C.O'S. and prisoners. Defendant CABREROS is sued in his individual capacity.

9. Defendant JONATHAN TOM (hereinafter referred to as TOM) was employed by the State of Hawaii Department of Public Safety as a Senior Adult Correctional Officer (S.A.C.O.). Defendant TOM is and was also responsible for the promulgation of the policies and procedures and allowance of the practices and customs

pursuant to which the acts and omissions of Defendants D.P.S. employees assigned to H.C.C.C. including Defendants PATRICK CHONG, BRIAN MEDEIROS, and JASON TAGALOA and some or all of JOHN DOES 1-20 and JANE DOES 1-20, as alleged herein, were committed. Plaintiff is informed and believes and thereon alleges that Defendant TOM was responsible for enforcing D.P.S. policies and procedures at H.C.C.C., and that Defendant TOM had additional responsibilities during the times relevant herein, including conducting investigations of violent altercations between A.C.O'S. and prisoners. Defendant TOM is sued in his individual capacity.

10. Defendant PATRICK CHONG (hereinafter referred to as CHONG), was employed by the State of Hawaii Department of Public Safety as an Adult Corrections Officer (A.C.O.). Defendant CHONG was on duty and acting in his role as an A.C.O. at H.C.C.C. on the date and time of the alleged offense. Defendant CHONG is being sued in his individual capacity.

11. Defendant BRIAN MEDEIROS (hereinafter referred to as MEDEIROS), was employed by the State of Hawaii Department of Public Safety as an A.C.O. Defendant MEDEIROS was on duty and acting in his role as an A.C.O. at H.C.C.C. on the date and time of the alleged offense. Defendant MEDEIROS is being sued in his individual capacity.

12. Defendant JASON TAGALOA (hereinafter referred to as

TAGALOA), was employed by the State of Hawaii Department of Public Safety as an A.C.O. Defendant TAGALOA was on duty and acting in his role as an A.C.O. at H.C.C.C. on the date and time of the alleged offense. Defendant TAGALOA is being sued in his individual capacity.

13. Plaintiff is informed and believes and thereon alleges that Defendants TOM, CHONG, MEDEIROS, and TAGALOA were responsible for enforcing D.P.S. policies and procedures at H.C.C.C. at the time of the Plaintiff's injuries.

14. Plaintiff is ignorant of the true names and capacities of Defendants JOHN DOES 1-20 and JANE DOES 1-20 and therefore sue said Defendant by such fictitious names. JOHN DOES and JANE DOES are fictitiously named persons, corporations, partnerships, business entities, and/or governmental agencies or entities who acted in a negligent, wrongful, or tortuous manner which proximately caused and contributed to the injuries and damages sustained by Plaintiff. Plaintiff will amend this Complaint to allege their true names and capacities and thereon allege that each of the factiously named Defendants are responsible in his/her individual capacity for the occurrences herein alleged, and that Plaintiff's damages as herein alleged were legally caused by their conduct. Plaintiff has made a good faith and diligent effort to identify said Defendants, including interviewing individuals with knowledge of the claims herein.

Accordingly, Plaintiff will substitute the true name and identities, capacities, acts and omissions of JOHN DOE and JANE DOE Defendants when the same are ascertained.

15. In addition to the agency relationships described above, Plaintiffs are informed and believe that for purposes of the Federal and State law claims stated herein, every Defendant was an agent of all other Defendants.

FACTS COMMON TO ALL CLAIMS

16. On or about September 23, 2014 between 9:00 a.m. and 10:00 a.m. Plaintiff was out in the recreation yard at H.C.C.C. with approximately twenty to twenty-five other inmates next to an area that is commonly referred to as the "fish bowl".

17. While out in the recreation area the Plaintiff was called into the area where the A.C.O'S. are stationed to take a telephone call.

18. While the Plaintiff was in the A.C.O. station he saw the lunchbox that belonged to Defendant CHONG. The Plaintiff being hungry took A.C.O. CHONG'S lunchbox back out to the recreation yard where he shared the contents of the lunchbox with other inmates.

19. Shortly thereafter Defendant CHONG discovered that someone had taken the food that was in his lunchbox.

20. Defendants CHONG and TAGALOA began yelling at the inmates and Plaintiff telling them that they would find out who

took the food.

21. Defendants CHONG and TAGALOA ordered the inmates and the Plaintiff to line up in the bathroom, and began to make the inmates and the Plaintiff be conducted to a strip search.

22. Defendants CHONG and TAGALOA had strip search approximately four to five inmates when they were about to strip search an inmate that the Plaintiff had given food to.

23. As Defendants CHONG and TAGALOA were about to strip search the inmate that the Plaintiff had given Defendant CHONG'S food to, Plaintiff called out and admitted that he was the person that took Defendant CHONG'S food.

24. Immediately upon the Plaintiff's admission that he had taken Defendant CHONG'S food, Defendant TAGALOA grabbed the Plaintiff and walked him inside the bathroom.

25. Once inside the bathroom Defendant TAGALOA began to strike the Plaintiff in the head and face with open and closed fists.

26. While Defendant TAGALOA was assaulting Plaintiff, Defendant CHONG entered into the bathroom, grabbed the Plaintiff by the back of his head and slammed the Plaintiff's head, face first, into the bathroom wall.

27. After Defendant CHONG slammed Plaintiff's face into the bathroom wall Plaintiff fell to the ground face first, whereupon Defendants CHONG and TAGALOA grabbed the Plaintiff's arms, pulled

them up, over the Plaintiff's back, whereupon Defendants CHONG and TAGALOA kicked the Plaintiff repeatedly in his body.

28. At the time when Defendants CHONG and TAGALOA committed the assault and battery on Plaintiff SMITH, Defendant MEDEIROS was working as an adult corrections officer in the area where Defendants CHONG and TAGALOA assaulted and battered the Plaintiff. At the time of the assault and battery Defendant MEDEIROS failed to take steps to prevent Defendants CHONG and TAGALOA from assaulting and battering the Plaintiff, and failed to provide proper medical care and treatment given the extent of the injuries suffered by the Plaintiff.

29. Plaintiff was taken briefly to the medical unit, and rather than being taken to the hospital for the proper care and treatment of his injuries, he was taken back up to his cell at H.C.C.C. where he was forced to wait for six hours before he was taken to receive medical care, and then had to wait another two hours before x-rays were taken, revealing the extent of the injuries that the Plaintiff had suffered.

30. At the time of the incident Defendant TOM was working as the Sargent in charge of the A.C.O.'S. At the time the Plaintiff was assaulted By Defendants CHONG and TAGALOA, Defendant TOM failed to prevent the assault, and failed to take corrective measures to insure the Plaintiff received proper medical care and treatment for the injuries sustained, and failed

to follow the proper protocols following an injury to an inmate.

31. At the time of the incident Defendant CABREROS was the Warden of H.C.C.C. and in charge of promulgating and insuring that the policies and procedures of D.P.S. were implemented and followed all the A.C.O.'S including Defendants CHONG and TAGALOA. At the time the Plaintiff was assaulted By Defendants CHONG and TAGALOA, Defendant CABREROS failed to insure that Defendants CHONG and TAGALOA were aware of the policies and procedures of D.P.S. and to prevent Defendants CHONG and TAGALOA from assaulting inmates, failed to take corrective measures to insure the Plaintiff received proper medical care and treatment for the injuries sustained, and failed to follow the proper protocols following an injury to an inmate.

32. At the time of the incident Defendant MAESAKA-HIRATA was the Deputy Director of D.P.S. and in charge of promulgating and insuring that the policies and procedures of D.P.S. were implemented and followed by H.C.C.C. Administration and Staff and all A.C.O.'S including Defendants CHONG, TAGALOA, MEDEIROS, and TOM. At the time the Plaintiff was assaulted By Defendants CHONG and TAGALOA, Defendant MAESAKA-HIRATA failed to insure that Defendants CHONG and TAGALOA were aware of the policies and procedures of D.P.S. and to prevent Defendants CHONG and TAGALOA from assaulting inmates, failed to take corrective measures to insure the Plaintiff received proper medical care and treatment

for the injuries sustained, and failed to follow the proper protocols following an injury to an inmate.

33. At the time of the incident Defendant ESPINDA was the Director of the D.P.S. and in charge of promulgating and insuring that the policies and procedures of D.P.S. were implemented and followed by H.C.C.C. Administration and Staff and all A.C.O.'S including Defendants CHONG and TAGALOA. At the time the Plaintiff was assaulted By Defendants CHONG and TAGALOA, Defendant ESPINDA failed to insure that Defendants CHONG and TAGALOA were aware of the policies and procedures of D.P.S. and to prevent Defendants CHONG and TAGALOA from assaulting inmates, failed to take corrective measures to insure the Plaintiff received proper medical care and treatment for the injuries sustained, and failed to follow the proper protocols following an injury to an inmate.

PLAINTIFFS INJURIES

34. As a direct and proximate result of the acts and/or omissions of Defendants, Plaintiff suffered the following injuries and damages:

- a. Serious personal injuries attributed to the deliberate indifference, negligence, and/or gross negligence of Defendants CHONG and TAGALOA;
- b. Egregious pain and suffering;
- c. Violation of Plaintiff's substantive due process,

freedom from deprivation of life without due process, as guaranteed by the Fourteenth Amendment to the United States Constitution and Article I of the Hawai'i State Constitution; and

- d. Cruel and unusual punishment, as forbidden by the Eighth and Fourteenth Amendments to the United States Constitution and Article I to the Hawaii State Constitution.

COUNT I

Cruel and Unusual Punishment in Violation of the Eighth and
Fourteenth Amendments to the Constitution of the United States-
Deliberate Indifference to Health and Safety
(42 U.S.C. § 1983)
(Against all Defendants)

35. Plaintiff realleges and incorporates by reference paragraphs 1 - 34 of the Complaint.

36. The Eighth Amendment to the U.S. Constitution, applicable to the individual states through the Fourteenth Amendment, prohibits State actors and their officials and agents, acting under color of law, from inflicting cruel and unusual punishments on incarcerated individuals, such as Plaintiff SMITH.

37. In the alternative, the Due Process Clause of the Fourteenth Amendment also prohibits Defendant State actors and State agencies, their officials and agents, from acting with deliberate indifference to the serious medical needs of their

incarcerated detainees, such as Plaintiff SMITH. These prohibitions against cruel and unusual punishment and violations of Due Process, requires that Defendants provide Plaintiff SMITH with safe housing and adequate and timely medical care.

38. As a result of the actions of Defendants CHONG and TAGALOA, including assault and battery, Plaintiff SMITH sustained bodily injury. In light of Plaintiff SMITH'S injuries that were sustained as a result of being assaulted by Defendant CHONG and TAGALOA, Plaintiff SMITH'S injuries and related discomforts constituted a serious medical need that should have been promptly and adequately evaluated and treated.

39. In spite of Plaintiff SMITH'S being assaulted by Defendants CHONG and TAGALOA, and the injuries Plaintiff SMITH sustained as a result of the assault by Defendants CHONG and TAGALOA and repeated complaints to guards, at HCCC regarding his injuries and other discomforts, Plaintiff SMITH did not receive timely or adequate medical care. The assault and battery by Defendants CHONG and TAGALOA and denial and delay of necessary or adequate medical care to Plaintiff SMITH by medical personnel at HCCC constitute deliberate indifference of Plaintiff SMITH'S.

40. Defendant CHONG and TAGALOA's assault and battery on the Plaintiff and failing to provide Plaintiff SMITH with timely and adequate medical care, Defendants CHONG and TAGALOA acted

with deliberate indifference to Plaintiff SMITH's serious medical needs and/or had knowledge that harm would occur.

41. At all times relevant herein, Defendants CHONG, TAGALOA, TOM, MEDEIROS, and all others who are responsible for providing care and services to inmates at HCCC, acted under the color of law or acted on behalf of the State of Hawai'i.

42. Under the circumstances, Defendants CHONG, TAGALOA, TOM and MEDEIROS' reckless conduct, including use of excessive force, constitute cruel and unusual punishment prohibited by the United States Constitution.

43. Plaintiff SMITH's injuries were legally or proximately caused by Defendant's actions described herein and the violation of Plaintiff SMITH's constitutional rights.

44. As a result of all Defendants foregoing acts and/or omissions, Plaintiff SMITH has suffered severe bodily pain, medical expenses, and other injuries and damages in amounts to be proven at trial.

45. Defendants are liable to Plaintiff under 42 U.S.C. § 1983 for the injuries and damages he sustained as a result of their actions which also deprived Plaintiff SMITH of his constitutionally protected rights.

46. Defendants are liable to Plaintiff SMITH because they were deliberately indifferent to a policy, custom, pattern or

practice that resulted in the deprivation of Plaintiff SMITH's constitutional rights.

47. Defendants are not protected by qualified immunity and are liable to Plaintiff because they knew or should have known of a custom or practice by that created an unreasonable risk of harm; and/or were deliberately or recklessly indifferent to the substandard procedures for receiving and addressing the treatment of inmates' complaints.

COUNT II

Cruel and Unusual Punishment —Haw. Const. Art. I, Sec. 12
(Against all Defendants)

48. Plaintiff realleges and incorporates by reference Paragraphs 1 through 47 above.

49. Defendants, and each of them were deliberately indifferent to Plaintiff SMITH'S health and safety.

50. As a result of Defendants' acts, omissions, policies, customs, and/or practices, Plaintiff SMITH suffered cruel and unusual punishment in violation of Article I, Section 12 of the Hawai'i State Constitution.

51. Such policies, customs, and/or practices include, but are not limited to, and ongoing pattern of deliberate indifference to the safety and security of HCCC prisoners.

52. Defendants ratified, and/or approved of the acts and/or omissions alleged herein, and knew that such conduct was

unjustified and would result in violations of the constitutional rights of Plaintiff SMITH.

53. The customs, policies, and/or practices of all Defendants was a direct and legal cause of Plaintiff SMITH'S injuries. Defendants ESPINDA, MAESAKA-HIRATA, CABREROS, and TOM failed to adequately train, and supervise Defendants CHONG, TAGALOA, and MEDEIROS to prevent the occurrence of the constitutional violations suffered by Plaintiff SMITH.

54. As a direct and proximate result of the aforementioned customs, policies, and/or practices of Defendants Plaintiff SMITH suffered injuries and damages as alleged herein.

55. The aforementioned acts of Defendants CHONG, TAGALOA, TOM, and MEDEIROS, and JOHN DOES 1-20 and JANE DOES 1-20, were willful, wanton, malicious, and oppressive, thereby justifying and award to Plaintiff SMITH of exemplary and punitive damages to punish the wrongful conduct alleged herein and to deter such conduct in the future.

COUNT III

(Substantive Due Process - Hawai'i Constitution Article I, § 5)

(All Defendants)

56. Plaintiff realleges and incorporates by reference Paragraphs 1 through 55 above.

57. By acting or failing to act as described above, by being deliberately indifferent to Plaintiff SMITH'S safety by

violating Plaintiff SMITH's civil rights, by failing to properly hire, train and/or supervise their employees and agents, and by failing to take other measures to prevent the assault and battery of Plaintiff SMITH, Defendants deprived Plaintiff SMITH of his liberty interest and right to be free from cruel and unusual punishment in violation of the substantive due process rights as defined by Article I, § 5 of the Hawaii Constitution.

58. By acting or failing to act as described above, Defendants deprived Plaintiff SMITH of his right to be free from cruel and unusual punishment in violation of his substantive due process rights as defined by Article I, § 5 of the Hawaii Constitution.

59. As a direct and proximate result of the aforementioned acts and/or omissions of Defendants, Plaintiff SMITH suffered injuries and damages as alleged herein.

60. The aforementioned acts of Defendants, were willful, wanton, malicious, and oppressive, thereby justifying and award to Plaintiff SMITH of exemplary and punitive damages to punish the wrongful conduct alleged herein and to deter such conduct in the future.

COUNT IV

Failure to Properly Supervise, Hire, and Train
(42 U.S.C. § 1983)

61. Plaintiff realleges and incorporates by reference Paragraphs 1 through 60 above.

62. The aforementioned acts and/or omissions of Defendants in being deliberately indifferent to Plaintiff SMITH's safety and violating his civil rights were the direct and proximate result of the customs, practices, and policies of Defendants as herein alleged.

63. Such policies, customs, and/or practices include, but are not limited to, and ongoing pattern of deliberate indifference to the safety and security of HCCC prisoners from abuses faced by them from adult correctional officers.

64. Defendants tacitly encouraged, ratified and/or approved of the acts and/or omissions alleged herein, and knew that such conduct was unjustified and would result in violation of constitutional rights.

65. The customs, policies and/or practices of said Defendants were a direct and legal cause of Plaintiff SMITH's injuries, in that Defendants failed to adequately hire, train, and supervise the adult corrections officers to prevent the occurrence of the constitutional violations suffered by Plaintiff SMITH. Defendants also failed to promulgate appropriate policies or procedures to take other measure to prevent the constitutional violations suffered by Plaintiff SMITH.

66. As a direct and proximate result of the aforementioned customs, policies, and/or practices of Defendants, Plaintiff SMITH suffered injuries and damages as alleged herein.

67. The aforementioned acts of Defendants, were willful, wanton, malicious, and oppressive, thereby justifying and award to Plaintiff SMITH of exemplary and punitive damages to punish the wrongful conduct alleged herein and to deter such conduct in the future.

COUNT V
Assault and Battery
(Defendants Chong and Tagaloa)

68. Plaintiff realleges and incorporates by reference Paragraphs 1 through 67 above.

69. Defendants CHONG and TAGALOA knowingly, intentionally, willfully, and deliberately caused Plaintiff SMITH harmful and offensive contact without his permission while Plaintiff SMITH was detained at HCCC.

70. At all times relevant herein, Defendants CHONG and TAGALOA, acted within the course and scope of their employment under color of law on behalf of the State of Hawai'i and HDPS.

71. The actions of the Defendants PIMENTAL and CHOY FOO, as described above, constitute assault and battery.

72. As a direct, legal and proximate result of Defendants CHONG and TAGALOA's actions, Plaintiff has suffered severe bodily injury, medical expenses, and other damages in an amount to be proven at trial.

COUNT VI
Negligence/Gross Negligence
(All Defendants)

73. Plaintiff realleges and incorporates by reference Paragraphs 1 through 72 above.

74 At all times relevant herein Defendants had a duty to exercise ordinary for the safety of prisoners being incarcerated at H.C.C.C.

75. Defendants breached that duty by Defendants CHONG and TAGALOA committing an assault and battery on Plaintiff SMITH.

76. Defendants breached their duty to Plaintiff SMITH by failing to exercise control to prevent A.C.O's from assaulting and battering inmates.

77. Defendants ESPINDA, MAESAKA-HIRATA, CABRERA, and TOM breached their duty to Plaintiff SMITH by allowing an environment that allowed Defendants CHONG and TAGALOA to freely commit the assault and battery to Plaintiff SMITH.

78. Defendants ESPINDA, MAESAKA-HIRATA, and CABRERA had a duty to properly hire, train, supervise, and/or retain employees and agents to take reasonable precautions to preserve the safety of their prisoners at H.C.C.C. Said Defendants breached this duty by negligently hiring, training, supervising, and/or retaining persons who acted with deliberate indifference and/or negligence and/or gross negligence, resulting in Plaintiff SMITH's injuries.

79. As a direct and proximate result of the aforesaid acts, Defendants are liable to Plaintiff SMITH for negligent and/or gross


negligence in the supervision, hiring, and/or training.

WHEREFORE Plaintiff prays for judgment against Defendants as follows:

1. For general and compensatory damages;
2. For special damages;
3. For punitive and exemplary damages;
4. For prejudgment interest;
5. For costs and attorney's fees pursuant to 42 U.S.C. § 1988 and as otherwise authorized by any other statute or law;
6. For such other and further relief as the Court deems just and proper.

DATED: Honolulu, Hawaii,

September 21, 2016



RICHARD D. GRONNA
Attorney for Plaintiff
ZACHARY SMITH

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF HAWAII


ZACHARY SMITH, an individual,) CIVIL NO. _____
)
Plaintiff,) DEMAND FOR JURY TRIAL
)
vs.)
)
NOLAN ESPINDA, in his)
individual capacity;)
JODIE MAESAKA-HIRATA, in her)
individual capacity;)
PETER CABREROS, in his)
individual capacity;)
JONATHAN TOM, in his individual)
capacity;)
PATRICK CHONG, in his)
individual capacity;)
BRIAN MEDEIROS, in his)
individual capacity;)
JASON TAGALOA, in his)
individual capacity;)
JOHN and JANE DOES 1-20,)
)
Defendants.)
_____)

DEMAND FOR JURY TRIAL

COMES NOW Plaintiff, ZACHARY SMITH, by and through his
attorneys who hereby demands a jury in all matters herein.

DATED: Honolulu, Hawaii,

September 21, 2016



RICHARD D. GRONNA
Attorneys for Plaintiff
ZACHARY SMITH

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

ZACHARY SMITH

(b) County of Residence of First Listed Plaintiff Hawaii
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
Richard D. Gronna; 841 Bishop Street, Suite 2201, Honolulu, HI
Telephone (808) 523-2441 Facsimile (808) 566-0347
Email: rgronna@hawaii-personal-injury.com

DEFENDANTS

NOLAN ESPINDA, in his individual capacity, et al.

County of Residence of First Listed Defendant Honolulu
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|---------------------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input checked="" type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input checked="" type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
42 U.S.C. 1983

Brief description of cause:
Violation of 8th Amendment

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

09/21/2016

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE